

S.B. Civil Writ Petition NO.1814/2005**Khinv Singh & Anr.****vs****ADJ No.1, Bikaner & Ors****DATE OF ORDER : - 30.3.2005****HON'BLE MR. PRAKASH TATIA,J.**

Mr. S.D.Vyas, for the petitioner.

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Heard learned counsel for the petitioner.

According to learned counsel for the petitioner, the petitioner was/is in possession of the property in dispute and this has been proved by the petitioner before the court below by the Commissioner's report and with the help of other documents. According to learned counsel for the petitioner, the Commissioner found the possession of the petitioner and despite this fact, the trial court granted injunction against the petitioner restricting him from interfering with the possession of the non-petitioners and the appellate court dismissed the appeal, therefore, the orders passed by the two courts below are perverse. It is also submitted that petitioner did not sale the land in question to anybody including the plaintiffs and in fact, he was minor in the year 1964, the year in which, the plaintiffs claimed that they purchased the property from the petitioner.

Since there is a concurrent finding of fact recorded by the two courts below against the petitioner, this court could not have even gone into the factual aspect of the matter, but when petitioner said in the writ petition supported by the affidavit that he was minor in the year 1964 and he did not sale the land in question, this court examined the reply filed by the petitioner before the trial court also. Before the trial court as well as in the appellate court, it was not a case of the petitioner that he was minor in the year 1964 and, therefore, this new plea cannot be allowed to be taken in the writ petition. Apart from above, there appears to be a sale deed in favour of the plaintiffs and two courts below have found the case of the plaintiff prima facie proved and also considered the Commissioner's report then even if there is any error of fact even then this cannot be corrected under Article 227 of the Constitution of India. So far as non-production of the original sale deed is concerned, at the stage where the injunction application are decided in all cases cannot be fataled.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-